

**Appellate Tribunal for Electricity**  
**(Appellate Jurisdiction)**

**APPEAL NO.256 OF 2013**

**Dated:8<sup>th</sup> October, 2014**

**Present:**

**HON'BLE MR. JUSTICE M KARPAGA VINAYAGAM, CHAIRPERSON  
HON'BLE MR. RAKESH NATH, TECHNICAL MEMBER**

**In the Matter of:**

**DAV COLLEGE MANAGING COMMITTEE,  
CHITRA GUPTA ROAD,  
NEW DELHI  
THROUGH ITS GENERAL SECRETARY  
SH. R.S. SHARMA**

**..... Appellant**

**Versus**

- 1. DELHI ELECTRICITY REGULATORY COMMISSION  
THROUGH ITS SECRETARY  
VINAYAMAK BHAWAN, 'C' BLOCK  
SHIVALIK, MALVIYA NAGAR  
NEW DELHI - 110017**
  
- 2. TATA POWER DELHI DISTRIBUTION LIMITED  
THROUGH ITS M.D.  
GRID SUB-STATION BUILDING,  
HUDSON LINES, KINGSWAY CAMP  
DELHI - 110009**

**...Respondent(s)**

Counsel for the Appellant(s) : Mr. B.P. Agarwal

Counsel for the Respondent(s):Mr. Pradeep Misra  
Mr. Daleep Kr. Dhayani  
Mr. Manoj Kr. Sharma for R.1  
Mr. Sunnay Choudhary  
Mr. Abhimanyu Singh  
Ms. Rupali for R-2

**J U D G M E N T**

**PER HON'BLE MR. JUSTICE M. KARPAGA VINAYAGAM,  
CHAIRPERSON**

1. DAV College Managing Committee, the private educational Institution, is the Appellant herein.
2. Challenging the Tariff Order dated 31.7.2013 passed by the Delhi Electricity Regulatory Commission with regard to the Tariff applicable to the Private educational Institutions putting the Appellant in the non-domestic category, the Appellant has filed this Appeal.
3. The short facts are as follows:
  - (a) The Appellant, being the Private Educational Institution, runs and manages over 720 Educational

Institutions comprising of Public Schools, Colleges, Institutes of Professional Education and Research Institutes.

(b) Tata Power Delhi Distribution Limited is the 2nd Respondent. It is the Distribution Licensee under the Electricity Act, 2003 and is in the business of distribution and retail supply of electricity in the NCT of Delhi.

(c) Tata Power Delhi Distribution Limited as a Distribution licensee filed the ARR for the year 2013-2014 on 10.12.2012 before the Delhi Commission. A public notice was published in the news papers. In the Public Notice objectors were advised to file their objections before the Delhi Commission. Accordingly, several persons including the Appellant, filed written objections on 01.04.2013. During the public hearing held on 17.05.2013 and on 03.06.2013, the Appellant also participated and raised its objections.

(d) After hearing both the parties, the Delhi Commission passed the impugned Order on 31.07.2013 allowing the domestic tariff to the

Educational Institutions run by the Government of NCT of Delhi and Municipal Corporation, but disallowed the Private Educational Institutions like the Appellant in respect of domestic tariff by putting them into the non-domestic category. Aggrieved over the same, the Appellant has filed this Appeal.

4. The learned counsel for the Appellant while assailing the impugned Order dated 31.07.2013 has urged the following grounds:

(a) The Delhi Commission has not acted consistent with the provisions of the Electricity Act; the policies notified by the Government; the Tariff Regulations 2003 and binding precedents of the Appellate Tribunal for Electricity while determining the Tariff Order for the period 2013-2014 for fixing the tariff for the Educational Institutions run by the private parties.

(b) The phrase “***purpose for which supply is required***” appearing in Section 62 (3) of the Electricity Act, 2003 while fixing the tariff for the Educational Institutions run by the private parties has not been taken note of by the Delhi Commission in correct perspective despite the fact that the

Educational Institutions have to be treated differently as provided under Section 62 (3) of the Act.

(c) The scheme of the Electricity Act provides that while determining the Tariff, the Delhi Commission shall not show undue preference to any consumer, but at the same time it may differentiate according to the consumer's load factor, power factor, voltage, total consumption of electricity. Section 62 (3) of the Act permits differentiation between classes of consumers on aspects mentioned in the said Section. This includes nature and purpose for which the electricity is required, etc.,

(d) The Educational Institutions are not commercial services. It is a public utility service, which is opened for the benefit of the Society, whereas the other commercial categories are simply profit making establishments catering to the luxury of the elite class. Clubbing of such two groups together for the purpose of determination of the tariff is not correct inasmuch as the purpose of Educational Institutions run by the Appellant is altogether different from the purpose of running the Malls, Hotels etc.

(e) Differentiating the Educational Institutions run by the private individuals from the Educational Institutions run by the Government on the ground that the private institutions are having the capacity to pay higher tariff is against the settled principles of Law as laid down by the Hon'ble Supreme Court and the High Court. The classification based merely on the fee structure would not be a satisfactory means of achieving the object.

(f) Keeping in view the objectives of the Educational Institutions, the Domestic Tariff should be made applicable. Therefore, the Tariff Order for the year 2013-2014 requires a re-look. For public welfare, only the domestic tariff be levied on the Educational Institutions irrespective of the fact whether it is a Private Institution or the Government Institution.

(g) The Tariff for the Educational Institution run by the private parties are kept under the non-domestic tariff, whereas the Educational Institutions run by the Government are kept under the domestic tariff. This is in violation of Article 14 of the Constitution of India, because the purpose of an Educational Institution is

to provide the Education whether it is run by the Government or any private Society like the Appellant.

5. On the basis of these grounds, the learned counsel for the Appellant prays for setting aside the impugned tariff Order dated 31.07.2013 and to direct the Delhi Commission to re-look the impugned tariff Order and to keep the Educational Institution of the Appellant under the domestic category similar to that of the Educational Institutions run by the Government of NCT of Delhi / Municipal Corporation or in the alternative a separate category be created for private institutions so that the Tariff be kept less than the non-domestic tariff.
6. While opposing the prayer of the Appellant, the learned counsel appearing for the Delhi Commission as well as the learned counsel appearing for the Distribution Company have made elaborate submissions justifying the impugned Order contending that no interference in the impugned Order is warranted.
7. In the light of the rival contentions, the following question would arise for consideration.

***“Whether the Tariff applicable to the Educational Institutions run by the private individuals shall be***

***equivalent to that of the Educational Institutions run by the Government of NCT of Delhi and Municipal Corporations?”***

8. The learned counsel for both the parties have cited several authorities, we shall consider the same at the appropriate place.
9. According to the Appellant, it is running various Regional Educational Institutions and though the Educational Institutions run by the Government of NCT of Delhi and Municipal Corporation of Delhi are being charged at domestic rate, the Appellant who is running several Educational Institutions is being charged at the non-domestic rates, which is at a higher rate. On that basis, the Appellant prays that it may be charged at the rate similar to the Educational Institutions run by the State Government / Municipal Corporation of Delhi or a separate category be created for the private Educational Institutions for the purpose of tariff.
10. The learned counsel for the Appellant has based these grounds primarily relying on the following Judgments.

**(i) Association of Hospitals Vs. MERC and Others (Appeal No. 110 of 2009)**

**(ii) Association of Industrial Electricity Users Vs. State of A.P. & Ors. (2002) 3 SCC 711.**

**(iii) State of A.P. Vs. Nallamilli Rami Reddi & Ors. (2001) 7 SCC 708.**

11. We have carefully considered the submissions and gone through the above the Judgments.
12. As pointed out by the Respondent that these judgments do not pertain to the issue raised in this Appeal as they involve different facts and circumstances raising different issues. Hence, they are of no use to the Appellant.
13. According to the Respondents, the Appellant is a profit making organisation and cannot be compared with the subsidised Government organs discharging its functions for the social up-liftment of the poor and the needy and as such the Appellant cannot take shelter of running institutions for public welfare and claim domestic tariff as it is privately run institution owned and controlled by the private individuals.
14. The Respondents in support of their contention has cited the following decisions rendered by this Tribunal:

**(i) Rajasthan Engineering College Society Vs. Rajasthan Electricity Regulatory Commission (Appeal no. 39 of 2012 dated 28.08.2012)**

- (ii) Tata Teleservices Limited Vs. Rajasthan Electricity Regulatory Commission & Ors (Appeal No. 88 of 2012 dated 20.05.2013)**
- (iii) Delhi Voluntary Hospital Forum Vs. Delhi Electricity Regulatory Commission & Ors. (Appeal No. 300 of 2013 dated 12.08.2014).**

15. Among these decisions, we feel that the very same question framed in this Appeal has been answered by this Tribunal in Appeal No. 39 of 2012 (Rajasthan Engineering College Society case). As such, the ratio decided in the said Judgment would squarely apply to the present facts of the case because this is related to the similar facts and the similar grounds urged by the Rajasthan Engineering College Society.

16. Let us now refer to the relevant ratio and findings rendered by this Tribunal in Appeal No. 39 of 2012. In the said case the Appellant – Rajasthan Engineering College Society mainly argued before this Tribunal that the Rajasthan State Commission gave undue preference to the Government run institutions by keeping them in the mix load category whereas re-categorised the Appellant which runs the private colleges by shifting it to non-domestic category. The crux of the argument made before this Tribunal by the Appellant in

that case was that both the Government run Educational Institutions and the Educational Institutions run by the members of the Appellant Society impart education, and that therefore the purpose for supply is the same, and as such, both must be treated equally in view of the fact that Article 14 of the Constitution of India prohibits equals to be treated unequally. This argument was dealt with by this Tribunal in the above Judgment and the same was rejected by giving various reasonings. The relevant portion is as follows:

“29. ....

*i) Government run institutes are controlled by the education departments and run on budgetary support. On the other hand private institutions are run by the Companies incorporated under Companies Act 1956 and operate on the commercial principles. The survival of Government run institutes very often depends upon the budgetary provision and not upon private resources which are available to the institutes in the private sector.*

*ii) Right to education is a fundamental right under Article 21 read with Articles 39, 41, 45 and 46 of the Constitution of India and the State is under obligation to provide education facilities at affordable cost to all citizens of the country. Private institutes are not under any such obligation and they are running the education institutes purely as commercial activity.*

*iii) Article 45 of the Constitution mandates the State*

***to provide free compulsory education to all the children till they attain the age of 14 years. In furtherance to this directive principle enshrined in the Constitution, a Municipal School providing free education along with mid-day meal to weaker sections of society cannot be put in the same bracket along with Public School with Air-conditioned class rooms and Air conditioned bus for transportation for children of elite group of society. They are different classes in themselves and have to be treated differently. Where Article 14 of the Constitution prohibits equals to be treated unequally, it also prohibits un-equals to be treated equally.***

***iv) The same is true for hospitals. Right to health is a fundamental right under Article 21 of the Constitution and Government has constitutional obligation to provide the health facilities to all citizens of India. Therefore, hospital run by the State giving almost free treatment to all the sections of society cannot be treated at par with a private hospital which charges hefty fees even for seeing a general physician.***

***31. In view of the above, we are of the opinion that the Commission has rightly distinguished the Government run educational institutes from the institutes run by the members of the Appellant Society and that the Commission has not shown any undue preference to the Government run institutes over the institutes of the Appellant Society. Accordingly the Commission has not violated the provisions of Section 62 (3) of the Act.”***

17. This Tribunal in the above case has rendered a finding that the conclusion of the finding of the State Commission by which the Government run Educational Institutions were to

be differentiated from the Educational Institutions run by the members of the Appellant Society is perfectly correct and as such, the State Commission did not show any undue preference to the Government run Institutions over the Institutions of the Appellant Society.

18. Following the said ratio, this Tribunal has rendered similar findings in other Judgments in Appeal No. 88 of 2012 dated 20.05.2013 (Tata Tele Services Ltd case) as well as Appeal No. 300 of 2013 dated 12.08.2014 (Delhi Voluntary Hospital Forum case).
19. After going through the above judgment in which the preposition of law has been laid down, we are of the firm view that the educational institutions run by the private parties or societies cannot be treated at par with the educational institutions run by the Government of National Capital Region of Delhi or Municipal Corporations because the purpose of the two is not identical. The Government educational institutions are run on constitutional mandate to provide education to every citizen of the Country irrespective of his social or financial status, whereas, the purpose of private institutions is commercial in nature.

20. The Appellant has relied upon the Judgment of this Tribunal in the case of Association of Hospitals Vs. Maharashtra Electricity Regulatory Commission & Ors. (Appeal no. 110 of 2009 & batch dated 20.10.2010). A perusal of the said Judgment would show that it would not support the case of the Appellant but supports the impugned Order of the Delhi Commission.
21. While referring to the Judgment in Appeal No. 110 of 2009, this Tribunal in Judgment in Appeal No. 300 of 2012 while quoting the relevant paragraph of the Judgment in Appeal No. 110 of 2009, held that “different tariff can be fixed for Railways and DMRC as they stand on different footing than the other class of consumers since the purpose of usage of electricity in the Airport and Railways/DMRC is different from that of the Appellant Society. The said distinguishing feature is applicable to the present case also”.
22. As held by this Tribunal, the classification of private Educational Institutions and Government owned Educational Institutions into two separate classes would satisfy the test of reasonable classification. This Tribunal in Appeal No. 39 of 2012 has relied upon the following three Supreme Court Judgments in support of the above preposition.

**i) PALLAVI REFRACTORES V. SINGARENI COLLIERIES CO. LTD (2005) 2 SCC 277;**

**ii) SHASHIKANT LAXMAN KALE V. UNION OF INDIA (1990) 4SCC 366;**

**iii) HINDUSTAN PAPER CORPN. LTD. V. GOVT. OF KERALA (1986) 3 SCC 398.**

23. In view of the above, we reiterate that the ratio of the Judgments mentioned above would equally apply to the present case in the context of differential tariff for Educational Institutions run by the Government and the Educational Institutions promoted by the private persons.

24. Accordingly, we hold as follows:

**“The Educational Institution run by the Private bodies and Societies on commercial basis for the purpose of earning profits cannot be treated at par with the Educational Institutions run by the Government of NCT of Delhi and Municipal Corporations of Delhi. The Government is under the Constitutional mandate to provide educational facilities to all the citizens of the country irrespective of social or economic status. Hence, they are not equals. The distinguishing features pointed out by this Tribunal in the above referred**

**judgments would equally apply to the present Appeal.”**

25. In view of the above conclusion, we see no merit in the Appeal. Consequently, the Appeal is dismissed. However, there is no order as to costs.

**(Rakesh Nath)**  
**Technical Member**

**(Justice M. Karpaga Vinayagam)**  
**Chairperson**

Dated:8<sup>th</sup> October, 2014

✓ REPORTABLE/NON REPORTABLE

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